UNITED NATIONS

HRI

International Human Rights Instruments

Distr.
GENERAL

HRI/CORE/1/Add.17/Rev.1
7 October 1996

ENGLISH
Original: FRENCH

CORE DOCUMENT FORMING PART OF THE REPORTS OF STATES PARTIES

FRANCE

[15 March 1996]

CONTENTS

		Paragraphs	Page
I.	LAND AND PEOPLE	1 - 14	4
II.	GENERAL POLITICAL STRUCTURE	15 - 40	6
A.	Institutional Framework	16 - 27	6
1.	The Executive	20 - 22	7
(a)	The Head of State	20 - 21	7
(b)	The Government	22	8
2.	The Legislature	23 - 25	8
(a)	The National Assembly	24	8
(b)	The Senate	25	9
3.	Institutional balance	26 - 27	9
B.	Jurisdictional bodies	28 - 40	9
1.	Control of the constitutionality of laws vested in the Constitutional Council	28 - 31	9
2.	Independence of the judiciary	32 - 36	10

CONTENTS (continued)

	Paragraphs	Page
3. Checks on administrative action	37 - 38	11
4. Establishment of the Court of Justice of the Republic	39 - 40	11
III. GENERAL LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS	41 - 126	12
A. Judicial, administrative and other authorities having jurisdiction in human rights matters	41 - 58	12
1. The Constitutional Council	42	12
2. The ordinary courts	43 - 52	12
(a) Civil courts	44 - 47	12
(b) Military courts	48	13
(c) Courts of appeal and their composition	49 - 50	13
(d) The Court of Assizes	51	14
(e) The Court of Cassation	52	14
3. The administrative court system	53 - 58	14
(a) Administrative courts	54	14
(b) Administrative courts of appeal	55 - 57	14
(c) The Council of State	58	14
B. Remedies available to individuals claiming a violation of their rights and systems of compensation and rehabilitation for victims	59 - 69	15
1. Remedies	59 - 68	15
(a) Juridical remedies	60 - 65	15
(b) Non-juridical remedies	66 - 68	16
2. Systems of compensation and rehabilitation for victims	69	17
C. Protection of rights guaranteed under various international human rights instruments and derogations from such rights	70 - 92	17
1. Guaranteed rights	70 - 86	17

	Paragraphs	Page
(a) Rights guaranteed under the Constitution	70	17
(b) Rights guaranteed under the law	71 - 86	17
2. Emergency powers	87 - 92	20
(a) State of siege	88	20
(b) State of emergency	89	20
(c) Article 16 of the Constitution of 4 October 1958	90 - 92	20
D. Incorporation and application of international human rights instruments under national law . . .	93 - 96	21
E. Information and publicity. National institutions or machinery responsible for ensuring respect for human rights	97 - 126	22
1. National Consultative Commission on Human Rights	101 - 112	22
(a) Background	101 - 104	22
(b) Role and powers	105 - 112	23
2. Independent administrative authorities . . .	113 - 120	24
(a) The National Commission on Electronic Data Processing and Freedoms	114 - 115	25
(b) The Supreme Audiovisual Council	116 - 120	25
3. Legal assistance	121 - 126	26
(a) Legal aid	122 - 124	26
(b) Legal rights assistance	125 - 126	27

List of annexes*

---

* The annexes, as submitted by the French Government in French, may be consulted at the United Nations Centre for Human Rights.

I. LAND AND PEOPLE

1. As of 1 January 1995, the population of metropolitan France, covering a territory of 551,602 square kilometres, was 58 million. Average annual population growth was 0.46 per cent for the period 1982-1993. Languedoc-Roussillon, Provence-Alpes-Côte d'Azur and Ile-de-France have shown the largest population growth since 1982, these regions alone accounting for more than 60 per cent of total growth. In most other regions, particularly in the west, growth rates are slowing. A vast region of sparser population is becoming increasingly marked in the centre of the country and is spreading towards the north-east. People live, for the most part, in cities: there are 30 major cities with a population of 200,000 or greater; 119 with a population of over 50,000 and 414 with a population of over 20,000. Among these latter cities, 144 are in the Ile-de-France. The population in communes outside the sphere of influence of the cities has barely varied over the past 15 years, remaining at around 5.8 million. The population of the major towns - 23.5 million inhabitants - has likewise remained relatively stable. In contrast, rural communes on the periphery of urban centres have grown very rapidly. Population growth between 1975 and 1990 thus occurred essentially in the suburbs and neighbouring rural communes, reaching totals of 17.6 million suburbanites and 9.7 million outer suburbanites and near-city rural dwellers.

2. The combined populations of the overseas departments (Guadeloupe, Martinique, Guyana, Reunion), the overseas territories (New Caledonia, French Polynesia, Wallis-and-Futuna) and the communities of Saint-Pierre-and-Miquelon and Mayotte amount to 2,020,000. The overseas departments, with seven cities of over 50,000 inhabitants, account for more than three quarters of the overseas population, or 1,527,000 inhabitants. The substantial population growth is the result of several factors: a considerably higher birth than death rate, owing to a still high fertility rate; a youthful population structure; and a reversal in migratory trends, with more arrivals than departures.

3. During the 1970s and 1980s the structure and evolution of the family was substantially altered by a decline in the number of marriages, a growing trend towards cohabitation, a decrease in the fertility rate, and a rise in the divorce rate. The number of births outside marriage, on the rise in recent years, accounted in 1988 for more than one quarter of all births. The total number of births yields a fertility index of 1.73 births per female in 1992. A fertility analysis by generation indicates that completed fertility stabilized at approximately 2.1 births per female in the generations born around 1950-1955. That stabilization can be expected to continue in the following generations, if the increase in the birth rate for females over 30 compensates for the decrease observed in females under 25.

4. The gross mortality rate has remained low for several years: 9.2 deaths per 1,000 persons. Expectation of life at birth has been increasing steadily since the end of the 1970s as a result of gains made in combating circulatory disorders and a decline in perinatal and infant mortality. Considerable progress has been made in combating infant mortality, in particular neonatal mortality during the first four weeks of life, the mortality rate for that period decreasing by 73 per cent between 1965 and 1988. The infant mortality rate has also declined, from 9.5 per thousand in 1982 to 6.1 per thousand in 1994.

5. As of 1 January 1995, individuals over 65 years of age numbered 8.7 million (60.9 per cent of them female) or 15 per cent of the population, while the 0 to 19-year-old cohort continued to shrink. Among the elderly, 2.1 million individuals were over 80 and 878,000 were over 85. By the year 2020 the over-65 population group will probably represent 20 per cent of the population and it is likely that the over-85 age group will number 2.5 million by the year 2040. The growing number of elderly people reflects a low birth rate as well as the efforts to reduce the mortality rate.

6. Without causing an increase in the total number of abortions, the legislation in force since 1975 has virtually eliminated abortions performed outside the health system, under conditions which seriously endangered women's health and reproductive capacities. There were 171,038 reported abortions in 1991 and 166,507 in 1992. The Government continues to develop its efforts in the area of sexual and contraceptive education, which is the only way to achieve a gradual decrease in the number of abortion requests.

7. The alien population includes persons born outside France - immigrants in the proper sense of the word - and minors born, for the most part, in France of alien parents. Act No. 93-933 of 22 July 1993 amending the Nationality Code permits such minors between the ages of 16 and 21 to acquire French nationality if they indicate their desire to do so at the local court or mayor's office of their place of residence. The alien population varies according to the number of arrivals, departures, births, and deaths and the number of individuals granted French nationality. There were 3,597,000 aliens in 1990, of which 1,300,000 came from European Economic Community countries. Aliens made up 6.3 per cent of the total population, essentially the same as in 1982. The region of Ile-de-France receives the major share of the immigrants, who tend to settle in the outlying areas rather than in Paris, and in 1990, it accounted for over 38 per cent of registered aliens. The stabilization in the number of aliens has been accompanied by an increase in the number acquiring French nationality: 1.77 million, or 3.13 per cent of the total population, at the time of the last census.

8. The desire on the part of the public authorities for better controls on immigration led to the adoption on 24 August 1993 of Act No. 93-1027, modifying the conditions applicable to the entry, reception and sojourn of aliens and refugees in France.

9. The Council of State having concluded, upon being consulted, that the Constitution of 4 October 1958 needed amending to incorporate the Schengen Agreement and the Dublin Convention into French domestic law, the Constitutional Act of 25 November 1993 specified that France could conclude agreements with other European States defining their responsibility for examining applications for asylum lodged with them. Act No. 93-1417 was passed on 30 December 1993 to supplement the provisions on this subject.

10. France's gross domestic product (GDP) in 1993 was 7,089,000 million francs, or 122,924 francs per capita. Gross disposable income in 1993 was 121,300 francs, and disposable household income was 86,907 francs.

11. The share allocated to social benefits rose from 29 per cent in 1980 to 34 per cent in 1990. The labour force - which includes both the economically active and the unemployed, according to the definition by the International Labour Office - was estimated at 24,980,000. The proportion of economically active individuals aged 25 to 49 remains very high, representing 96 per cent of the men and 74 per cent of the women in that group. Feminization of the workplace has been a growing phenomenon since the early 1980s, with the employment rate for women 15 years of age and over reaching 45.8 per cent in 1990. In that same year, there were 1,334,540 female heads of household, representing 6.2 per cent of the total number of households.

12. The minimum wage, changes in which take into account both prices and salaries, was 34.83 francs per hour as of 1 April 1991, representing a gross monthly amount of 5,886.27 francs for 169 hours of work. Since 1988, the differences in average remuneration between the categories at the extreme ends of the scale have stabilized. In 1990, a skilled worker received an average of 74,300 francs per annum while a manager received 3.12 times that amount, or 232,100 francs per annum. Men received an average net annual salary of 119,900 francs while women received 90,700 francs, giving men an apparent 32.1 per cent advantage over their female colleagues.

13. Slowing economic growth has been reflected in a rise in unemployment. In 1993, the number of unemployed, as defined by the International Labour Office, reached 2.78 million, representing an unemployment rate of 11.1 per cent of the labour force.

14. The French Government has provided as an annex a series of tables and graphs describing the principal demographic, economic and social indicators of France*.

II. GENERAL POLITICAL STRUCTURE

15. The French tradition of commitment to human rights dates back to the eighteenth century. It was enshrined in the Declaration of the Rights of Man and of Citizens of 1789, which is referred to in the preamble to the Constitution of 4 October 1958 and has the value of a constitutional norm. It has taken root over the ages to become a part of the French institutional and intellectual heritage, and has more recently been enriched by France's accession to many international conventions. The current system for the protection of human rights is thus closely linked to the French legal and political framework, the principal elements of which are political democracy, separation of powers, independence of the judiciary and control of administrative action.

A. Institutional Framework

16. In 1875, the Third Republic established once and for all a system of representative democracy, the principles of which were enshrined and developed

---

* These tables and graphs, as submitted by the French Government in French, may be consulted at the United Nations Centre for Human Rights.

in the Constitution of 4 October 1958. France is an indivisible, secular, democratic and social republic. The language of the Republic is French (art. 2 of the Constitution). National sovereignty is vested in the people, who exercise it through their representatives; the people may also be consulted by referendum (art. 3).

17. The Constitution guarantees the democratic exercise of sovereignty by prohibiting its exclusive use by a group or an individual (art. 3). The people elect their representatives by universal, equal and secret suffrage (art. 3). The Constitution recognizes the existence of political parties and associations (art. 4), which are the pillars of a pluralistic democracy.

18. Under Title XIV of the Constitution (art. 89), the power to propose constitutional amendments is vested concurrently in the President of the Republic, who proposes such amendments at the request of the Prime Minister, and in the members of Parliament. Parliament adopts the draft amendment, which is then approved by the people in a referendum. The draft amendment may also be adopted definitively by the Parliament, meeting as a full assembly. The power of amendment is not, however, unlimited:

(a) article 89, paragraph 4, prohibits any amendment which "violates the integrity of the territory";

(b) article 89, paragraph 5, formally prohibits any amendment which would result in an alteration of the republican form of government.

19. Several of the institutions established under the Constitution of 1958 are generally considered to characterize a parliamentary system. However, because it includes election by universal suffrage of the President of the Republic and a flexible separation of powers, the French system is often considered to be mixed or semi-presidential.

1. The Executive

(a) The Head of State

20. The President of the Republic, the Head of State, is elected by direct universal suffrage for a term of seven years. By virtue of article 5 of the Constitution, the President is responsible for "ensuring, through his arbitration, the proper functioning of government and the continuity of the State". The President appoints the Prime Minister and, on his advice, the other members of the Government (art. 8); he presides over the Cabinet (*Conseil des ministres*) (art. 9) and has the power to dissolve the National Assembly (art. 12). The Head of State is responsible for safeguarding national independence and territorial integrity and for ensuring respect for community accords and treaties. Under article 5 of the Constitution, the President is vested with direct authority over national defence matters: he is head of the armed forces by virtue of article 15 of the Constitution. The President also has the power to make appointments to civil or military posts (art. 13). Treaties are negotiated on behalf of the President of the Republic, and it is he who ratifies them, with parliamentary authorization when necessary (art. 52).

21. The President may, moreover, at the proposal of the Government or of both Houses, submit to referendum any bill dealing with governmental structure or entailing ratification of a treaty which, without being contrary to the Constitution, would affect the existing institutional structure or its functioning, or - since the constitutional reform of 4 August 1995 - any bill dealing with reforms to national economic or social policy and the public services that administer it (art. 11). Lastly, under article 16, the Head of State may be granted extended powers under special circumstances.

(b) The Government

22. The Government (the Prime Minister and his ministers) is the second organ of executive power; it is appointed by the President of the Republic and constitutes a collegiate body. The Government is collectively answerable to Parliament in respect of its general policy. The Government "determines and conducts the nation's policy" and to that end has at its disposal "the administration" and the power to use "armed force" (art. 20). The Prime Minister guides the action of the Government and, with the exception of those powers granted to the President of the Republic, is vested with regulatory power (art. 21). Like members of Parliament, the Prime Minister may table legislation (art. 39).

2. The Legislature

23. Legislative power is vested in the Parliament, which is composed of the National Assembly and the Senate. The division of jurisdiction between the legislature and the regulatory authorities is established in articles 34 and 37 of the Constitution. Parliament has, in particular, an exclusive mandate to enact legislation relating to civic rights, citizens' fundamental guarantees of public freedoms, the definition of serious crimes and other major offences and the penalties applicable, and criminal procedure. With effect since the constitutional reform of 4 August 1995, Parliament assembles in ordinary session beginning on the first working day in October and ending on the last working day in June, but the number of days spent in regular sitting may not exceed 120 over the course of the session.

(a) The National Assembly

24. The National Assembly is made up of 577 deputies; its full membership is renewed every five years by direct universal suffrage (uninominal majority vote in two ballots), except in the case of early elections when the Assembly has been dissolved. The power to discuss and enact legislation is vested in the National Assembly, which may delegate to the Government the authority to take measures, by way of ordinances, in domains normally reserved for parliamentary legislation. Such ordinances are adopted by the Cabinet, on the advice of the Council of State (Conseil d'Etat); they enter into force on the date of publication, but lose all force if the ratification bill is not laid before the Parliament by the date fixed in the enabling Act. The National Assembly reviews and adopts the budget and financial legislation; it exerts control over the Government's actions by holding ministers to account; and it has the power to authorize the ratification of certain treaties and to authorize a declaration of war. It takes part in the constitutional amendment process. Most of these powers are wielded jointly by the Senate.

(b) The Senate

25. Members of the Senate are elected by indirect universal suffrage and represent the Republic's communes, departments and overseas territories. As part of the Parliament, the Senate shares in the exercise of all the powers conferred on the Parliament by the Constitution. Senate members have the right to propose legislation. The Senate debates and adopts legislation; however, in the event of disagreement between the Senate and the National Assembly, a constitutional procedure may lead to the adoption of laws which have not been passed by the Senate. While playing a role in Parliament's monitoring of the Government's actions, the Senate cannot follow up on its observations by challenging the authority of the Government.

3. Institutional balance

26. Institutional balance is ensured by the Constitution of 4 October 1958, which maintains the two traditional procedures by which the Government's authority can be challenged: the motion of censure and the vote of confidence (Title V). The National Assembly can challenge the authority of the Government by means of a motion of censure. Adoption of the motion means that the Prime Minister must submit the Government's resignation to the President of the Republic. In the case of a vote of confidence, the Government itself takes the initiative. It may call for a vote on its overall political programme; failure to obtain a majority then means that the Government must resign. It may also call for a vote of confidence to secure adoption of a text; the text is considered to be adopted unless a motion of censure, brought within the following 24 hours, is passed.

27. The second aspect of the flexible separation of the executive and legislature is the power to dissolve the National Assembly, as provided for under article 12. Such power is vested in the President of the Republic, without obligation of countersignature. If the Assembly is dissolved, general elections are held no less than 20 or more than 40 days later. The new Assembly convenes on the second Thursday after its election and cannot be dissolved during the following year.

B. Jurisdictional bodies

1. Control of the constitutionality of laws vested in the Constitutional Council

28. In addition to the powers vested in it with regard to the electoral process and the status of elected officials, the Constitutional Council (*Conseil constitutionnel*) rules on the constitutionality of legislative texts, treaties and parliamentary rules. The Council has nine members, each appointed for a non-renewable nine-year term, and it is renewed by thirds every three years. Three of its members are appointed by the President of the Republic, three by the Speaker of the National Assembly and three by the Speaker of the Senate. In addition to its nine members, former Presidents of the Republic are by law lifetime members of the Council. The president of the Council is appointed by the President of the Republic and, in the case of a divided opinion, casts the deciding vote. The Council may be consulted as regards defence of the regulatory domain and the constitutionality of ordinary Acts; such legislation may be submitted to it - before promulgation - by

the President of the Republic, the Prime Minister, the Speaker of the National Assembly, the Speaker of the Senate, 60 deputies or 60 senators. Institutional practice has been to make increasingly frequent parliamentary application to the Council since the constitutional reform of 1974.

29. The "constitutional bloc" - the body of standards which it is the Council's responsibility to uphold, and which legislators are bound to respect - is not limited to the founding text of the Fifth Republic; it also includes the Declaration of the Rights of Man and of Citizens of 1789, the preamble to the Constitution of 1946 and the fundamental principles recognized under the law of the Republic, as determined by the Council in its judicial decisions.

30. The Constitutional Council may also rule on the constitutionality of international treaties. If, after having been seized of the matter by the President of the Republic, the Prime Minister or the Speaker of either chamber of Parliament, the Council determines that a clause contained in an international treaty is unconstitutional, that treaty can be neither ratified nor adopted until the Constitution is amended. Since the promulgation of constitutional Act No. 92-554 of 25 June 1992 (art. 2), the Council may act in such a case when it has been seized of the matter by 60 deputies or senators.

31. The decisions of the Constitutional Council have the force of res judicata. Article 62 of the Constitution provides that such decisions "do not admit of any appeal" and that they "are binding on the Government and on all administrative and judicial authorities".

2. Independence of the judiciary

32. The independence of the judiciary is guaranteed under the Constitution, which treats the matter of judicial power under Title VIII. The President of the Republic ensures the independence of the judiciary (art. 64), which derives largely from the status of judges. Under article 64 of the Constitution, in a clause iterated in article 4 of the Judicial Service (Organization Act) Ordinance No. 58-1270 dated 22 December 1958 (amended), judges of the ordinary courts are irremovable - they may not be assigned to a new post, even in the case of a promotion, without their agreement. In performing their duties, judges (*magistrats du siège*) may not accept instructions from others, arriving at their decisions freely within the limits set by law. In most cases, the judicable party is entitled to appeal against their decisions.

33. Article 5 of the Judicial Service Ordinance places public attorneys (*magistrats du parquet*) under the guidance and supervision of their hierarchical superiors and under the authority of the Minister of Justice. In hearings, however, they enjoy unconstrained freedom of speech.

34. The functions of the Supreme Council of Justice (*Conseil supérieur de la magistrature*), established by the Constitution, include participating in the appointment of judges and public attorneys by submitting proposals to the President of the Republic (in the case of judges on the Court of Cassation, the first President of the Court of Appeal or the President of a court of

major jurisdiction), or by issuing a certified opinion (*avis conforme*) (in the case of other judges) or an opinion (*avis simple*) (in the case of public attorneys other than procurators-general).

35. Authority to initiate disciplinary proceedings is vested in the Minister of Justice alone. Under the French Constitution of 4 October 1958 as amended by the Constitutional Act No. 93-952 of 27 July 1993 amending the Constitution and by the Judicial Service (Amendment of Status) Organization Act of 5 February 1994, disciplinary proceedings are dealt with in a single body whose composition varies depending on whether a judge or a public attorney faces disciplinary action. The (adversarial) proceedings are conducted behind closed doors.

36. When constituted to have jurisdiction over judges, the Supreme Council of Justice functions as a disciplinary board for judges; its decisions may be appealed to the Council of State (*Conseil d'Etat*). When constituted to have jurisdiction over public attorneys, it hands down opinions concerning disciplinary measures against them. Decisions in this regard are taken by the Minister of Justice and may be appealed to the Council of State.

3. Checks on administrative action

37. Checks on administrative action safeguard the principle of legality, which is a basic pillar of administrative law and the condition *sine qua non* of the rule of law. In France, the effect of the constitutional-rank principle of separating the administration from the judiciary, based on the Act of 16 and 24 August 1790, is that administrative action is subject to review not by the ordinary courts but by administrative courts; this dual jurisdiction follows from the *summa divisio* of French law (public law and private law) and corresponds to the French conception of the separation of powers.

38. The Act of 24 May 1872 gave final form to the system known as delegated justice, as distinct from the system of justice administered by the Head of State to which the Second Empire had returned: administrative courts renders their judgements "in the name of the French people"; the Constitutional Council has, moreover, incorporated this rule into the "constitutional bloc", recognizing it as a fundamental principle under the laws of the Republic. In addition to that basic reform, legislative, regulatory and jurisprudential developments since 1872 have followed the trend, originating in the early nineteenth century, towards strengthening the independence and quality of administrative justice (recruitment, status of the members of the administrative courts, organization and composition of litigation units, etc.).

4. Establishment of the Court of Justice of the Republic

39. Since the entry into force of the Organization Act No. 93-1252 of 23 November 1993, the Court of Justice, a newly created body, has wielded the powers that formerly devolved upon the Parliamentary Court of Justice in respect of members of the Government who in the performance of their functions commit actions defined as crimes under the law in force.

40. The Court of Justice of the Republic comprises 3 senior judges from the Court of Cassation, one of whom serves as its president, plus 12 members elected by the National Assembly and 12 by the Senate (or their deputies). The procurator-general of the Court of Cassation, assisted by the senior advocate-general and two advocates-general designated by the procurator-general, serves as the State prosecutor.

III. GENERAL LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS

A. Judicial, administrative and other authorities having jurisdiction in human rights matters

41. In the exercise of their functions, all French authorities, including the administrative authorities within their respective jurisdictions, are competent to apply the human rights principles and norms set forth in the international instruments ratified by France and such human rights principles and norms as are provided for under the Constitution and law of the French Republic. Various courts are responsible for ensuring respect for human rights: the Constitutional Council, the ordinary courts and the administrative courts.

1. The Constitutional Council

42. The Constitutional Council, in the course of its review of the constitutionality of laws, checks texts submitted to it, including those relating to human rights, for conformity to constitutional standards.

2. The ordinary courts

43. Under article 66 of the Constitution, no one may be arbitrarily detained. The judiciary, which safeguards individual liberties, enforces this principle under the conditions determined by law.

(a) Civil courts

44. The ordinary courts comprise courts of first instance applying general law or exercising special jurisdiction.

45. The courts applying general law include:

(a) District courts (*Tribunaux d'instance*): courts having jurisdiction in civil actions involving small claims and in criminal cases involving minor offences (*contraventions*);

(b) Courts of major jurisdiction (*Tribunaux de grande instance*): general courts having jurisdiction in all cases with the exception of those reserved by law for a specialized court; courts of major jurisdiction have civil as well as criminal jurisdiction in matters involving more serious offences (*délits*).

46. The courts with special jurisdiction comprise:

(a) Commercial courts: specialist, professional bodies composed of judges elected in a two-part ballot;

(b) Labour courts: elected, joint bodies which seek solutions by conciliation to disputes arising out of any labour contract between employers or their representatives and the wage-earners they employ. They hand down decisions on disputes in which efforts at conciliation prove unsuccessful;

(c) Social Security tribunals: these rule on disputes arising out of the application of social security legislation and regulations which do not inherently derive from other matters at litigation;

(d) Joint agricultural tenancy tribunals: they have jurisdiction over disputes between lessors and agricultural leaseholders concerning the application of titles 1 and 4 of the Rural Code.

47. The institutions with jurisdiction over minors are:

(a) The Juvenile Court judge (*juge des enfants*), a judge from a court of major jurisdiction, selected for his interest in matters concerning children and his abilities. He investigates cases and renders judgements;

(b) The Juvenile Court (*tribunal pour enfants*), composed of a Juvenile Court judge and two other judges, chosen from among individuals aged over 30 with an interest in children and competent in matters of serious crime (*délits* and *crimes*) involving minors under 16 years of age;

(c) The Assize Court for Juveniles (*cour d'assises des mineurs*), composed of three judges (a president and two other judges) who should if at all possible be Juvenile Court judges. The Assize Court for Juveniles has jurisdiction over serious crimes (*crimes*) committed by minors aged between 16 and 18.

(b) Military courts

48. Military courts have jurisdiction over military matters in peacetime: under each court of appeal, there is a court of major jurisdiction and a court of assize which can try cases involving military offences and crimes (infractions, délits and *crimes*) as defined under the Code of Military Justice, and cases involving serious crimes and offences (*délits* and *crimes*) under ordinary law committed by military personnel in the performance of their duties.

(c) Courts of appeal and their composition

49. Courts of appeal (*cours d'appel*) are the only courts of second instance that can hear appeals against decisions handed down subject to appeal by any civil or criminal court of first instance, whether of general or special jurisdiction, within their districts.

50. It is the responsibility of the indictment division within each court of appeal to monitor the progress of the inquiries being conducted by investigating magistrates. The division considers the lawfulness of procedures brought to its attention and rules on appeals lodged against orders by investigating magistrates.

(d) The Court of Assizes (*Cour d'assises*)

51. Normally sited in the same place as each court of appeal, or in the departmental capital, the Courts of Assizes have jurisdiction to try crimes (*crimes*) committed either by adults or by minors aged between 16 and 18 years. Courts of Assizes are not standing bodies. They are made up of three professional judges and nine jurors chosen by lot. Pursuant to article 698-6 of the Code of Penal Procedure, however, jurors are not required to be present in a certain number of cases laid down by legislation.

(e) The Court of Cassation (*Cour de Cassation*)

52. The Court of Cassation, the highest court in the judicial hierarchy, ensures the precise and uniform application of the law by means of its review on points of law of decisions handed down in courts of last resort.

3. The administrative court system

53. The administrative court system consists of the administrative courts of first instance (*tribunaux administratifs*), the administrative courts of appeal (*cours administratives d'appel*) and the Council of State.

(a) Administrative courts

54. The administrative courts are courts with general jurisdiction at first instance in administrative disputes.

(b) Administrative courts of appeal

55. The administrative courts of appeal hear appeals against judgements handed down by the administrative courts of first instance, except in the case of litigation relating to municipal or cantonal elections, applications to quash regulatory orders, and applications for review of the legality of such orders: these matters fall within the jurisdiction of the Council of State.

56. The jurisdiction of the Council of State has been progressively transferred to the administrative courts of appeal. Since September 1992, the administrative courts of appeal have been able to rule on appeals lodged against judgements by administrative courts on applications to quash non-regulatory decisions taken pursuant to the Urban Development Code, the Construction and Housing Code, the Expropriation in the Public Interest Code and non-regulatory decisions concerning taxation and levies.

57. Since 1 February 1994, appeals against non-regulatory governmental decisions have belonged to the jurisdiction of the administrative courts of appeal. Application may be made to the Council of State for rulings by the administrative courts of appeal to be struck down as legally incorrect (*cassation*).

(c) The Council of State

58. The Council of State has original and final jurisdiction in certain matters, among them, applications to quash decrees (and ordinances, prior to ratification) and major ministerial decisions (decisions with regulatory force

and personal decisions requiring prior consultation with the Council of State); individual claims involving the rights of civil servants, officials or military personnel appointed by the President of the Republic; and applications to quash administrative decisions taken by collegiate bodies with national jurisdiction. The Council of State rules on the legal correctness of decisions handed down by the administrative courts of appeal and the specialized administrative courts; it hears appeals from the administrative courts of first instance on disputes relating to municipal or cantonal elections, applications to quash regulatory orders, and applications for review of the legality of such orders.

B. Remedies available to individuals claiming a violation of their rights and systems of compensation and rehabilitation for victims

1. Remedies

59. It falls essentially to the courts to monitor respect for human rights and punish any violations. There are, nevertheless, non-juridical procedures for the protection of rights and freedoms.

(a) Juridical remedies

60. Administrative courts have jurisdiction over administrative decisions and actions. Any individual who has suffered an illegal infringement of one of his freedoms by a public servant may seek annulment of the decision by applying to an administrative court to have it set aside. The aggrieved party may also seek reparations for injuries or damages. Application to set aside an administrative action is a procedure readily accessible to persons who have suffered as a result of an administrative decision. It can be made, even in the absence of legislation, in reference to any administrative act; entitlement to seek such a remedy cannot be waived. Any French or foreign national is thus entitled to appeal against an administrative action, even if his interest in seeking annulment is purely a matter of principle. Appeal may be lodged without a lawyer at all levels of the courts. The petitioner must base his application on one of four charges: lack of jurisdiction, procedural irregularity, misuse of powers, or illegality. Any annulment granted by the administrative court is universally applicable and has effect from the date the contested decision was taken.

61. Ordinary courts also have jurisdiction in respect of administrative decisions and actions. Indeed, article 66 of the Constitution makes the judiciary the guardian of individual freedoms. Thus, any individual who has suffered injury as a result of an administrative act may bring an action for damages before the ordinary courts if that act involved the improper possession of immovable property (expropriation) or infringed a fundamental individual freedom (unlawful physical act). In addition, the ordinary courts, as criminal courts, may pursuant to article 111-5 of the new Penal Code interpret regulatory and individual administrative decisions and assess their legality when the outcome of criminal proceedings depends on such an assessment. It is the criminal courts that try persons vested with public authority or responsible for providing a public service who are accused of the infringements of liberty specified in article 432-4 of the new Penal Code.

62. The ordinary courts are also competent to uphold individual freedoms in relations between private persons.

63. The ordinary courts uphold the freedom of the individual in all its forms (independence of will, contractual freedom, right to privacy). They may award damages, annul contracts, avoid contractual provisions, and declare inadmissible evidence obtained in breach of the other party's liberty.

64. With regard to infringements of freedoms, therefore, jurisdiction is shared as follows: administrative courts have jurisdiction in administrative decisions and actions; criminal courts have exclusive jurisdiction in criminal matters; and civil courts have jurisdiction in cases involving infringements by one individual of another's freedom where no criminal penalties are applicable.

65. At the European level, a subsidiary mechanism for the protection of human rights is provided by the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by France on 3 May 1974. France recognized on 2 October 1981 the right of individual remedy as established under the Convention.

(b) Non-juridical remedies

66. As a general rule, discretionary redress is an option in any dispute between a private person and the State. Even when a decision has been taken against which a remedy may be sought at law, in certain cases the law may require legal remedies to be preceded by administrative remedies (which must be undertaken within the specified period in order to maintain the right to the legal remedy). In order for the prior remedies requirement to be more effective in reducing the number of cases brought before the administrative courts, the Act of 31 December 1987, relating to reform of administrative litigation, lays down in article 13 that the Council of State shall determine by decree the conditions under which such an obligation shall be instituted, in the case of both contractual disputes and disputes relating to public authorities' non-contractual liabilities.

67. A specific non-juridical mechanism for the protection of freedoms was established by the Act of 3 January 1973, as amended by the Act of 24 December 1976, which set up the office of Ombudsman (*Médiateur*) of the Republic. The Ombudsman is an independent authority, appointed by decree of the Cabinet for a non-renewable term of six years. Any individual may apply to the Ombudsman through a deputy or senator of his choice and/or may apply to the representative of the Ombudsman in his department; the Ombudsman receives complaints concerning relations between private persons and the State administration, municipalities, public institutions or any other public service bodies. The Ombudsman seeks to settle disputes amicably and is vested with investigatory authority; his inquiries may not be blocked on grounds of administrative confidentiality. His representatives in the departments are authorized to act on his behalf, settling directly any local dispute brought before them. Consideration of a particular case may give rise to proposals for public service reform. An annual report is published.

68. The right of petition is available to all. Individuals reporting a violation of human rights or seeking amendment of a law in force may apply

directly to one of the supreme authorities of the State. The existence of other, more effective means of protecting rights, as mentioned previously, explains the infrequent and declining use of this remedy.

2. Systems of compensation and rehabilitation for victims

69. In addition to the principles and guarantees already cited, a number of specific mechanisms exist:

(a) Any action not carried out in the prescribed manner and place and consisting in the arrest or detention of an individual or allowing of or perpetuating a deprivation of freedom except as provided for by law constitutes an infringement of freedom which may give rise to the award of damages by the ordinary courts;

(b) Where a retrial establishes the innocence of an individual convicted of a serious crime or major offence, that individual, under article 626 of the Code of Criminal Procedure, has the right to compensation in proportion to the injury caused by the conviction;

(c) In accordance with articles 149 and following of the Code of Criminal Procedure, compensation may be awarded to an individual held in pre-trial detention during proceedings which give rise to a discharge, release or final acquittal, where such detention has caused manifestly abnormal and particularly severe injury.

C. Protection of rights guaranteed under various international human rights instruments and derogations from such rights

1. Guaranteed rights

(a) Rights guaranteed under the Constitution

70. The preamble to the Constitution of 4 October 1958 reaffirms the French people's commitment to the Declaration of the Rights of Man and of Citizens of 1789, as confirmed and enlarged upon in the preamble to the Constitution of 1946. All these texts have constitutional value. The Constitution also recognizes the equality of citizens and freedom of conscience (art. 2), the freedom to form political associations (art. 4) and individual security (art. 66).

(b) Rights guaranteed under the law

71. Legislation has developed and strengthened the protection of certain rights, in accordance with the international treaties ratified by France.

(i) Non-discrimination

72. France ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 28 July 1971. Act No. 72-546 of 28 July 1972, on action to prevent racism, punishes incitement to discrimination; defamation of an individual based on his origin, or his

membership or lack thereof in a particular ethnic, national, racial or religious group; and injurious behaviour directed against an individual for those same reasons.

73. Article 225-1 of the new Penal Code punishes discriminatory conduct towards physical persons, which was already punishable under the old Code, but also towards artificial persons on account of their members. The article also extends the scope of discrimination, which already included racial, ethnic, national and religious discrimination and discrimination based on sex, family situation, state of health, handicaps or moral standards, to cover discrimination based on political opinions or membership of a trade union.

74. Article 225-2 of the new Penal Code sets out the various kinds of discriminatory conduct, which may consist in:

refusing to provide a good or service;

hindering a person in his normal pursuit of an economic activity;

refusing to hire, discipline or fire a person;

making the provision of a good or service subject to a discriminatory condition;

making an offer of employment subject to a discriminatory condition.

75. Act No. 83-634 of 13 July 1983 concerning the rights and obligations of civil servants (Title I of the new civil service regulations) provides that "freedom of opinion is guaranteed to civil servants" and that "no distinction may be made between civil servants on the basis of their political, trade union, philosophical or religious opinions, sex or ethnic origin".

76. The purpose of article 432-7 of the new Penal Code is to penalize discriminatory conduct on the part of public officials and, more generally, persons vested with public authority or citizens responsible for providing a public service. It renders liable to correctional penalties any person vested with public authority or responsibility for providing a public service who discriminates within the sense of article 225-1 of the new Penal Code by denying a legally conferred right or hindering the normal pursuit of any economic activity.

77. The Act of 1 July 1901 relating to associations provides for the legal dissolution of any association the statutes or activities of which are at variance with the law. It follows that any association whose statutes or activities are contrary to the Act of 1 July 1972 on action to prevent racism is liable to dissolution.

78. Article 2-1 of the Code of Criminal Procedure provides that associations that have been duly registered for at least five years at the time of the event and are committed by their statutes to combat racism and assist victims of racial discrimination may bring criminal proceedings for indemnification in respect of various offences committed on racist grounds, among them simple

or aggravated homicide, mortal injury, threats, or intentional bodily harm, or the discriminatory conduct punishable under articles 225-2 and 432-7 of the new Penal Code.

79. Act No. 90-615 of 13 July 1990 further strengthens efforts to prevent racist, anti-semitic and xenophobic acts of all kinds. It makes offences of certain forms of falsification of contemporary history. The act defines additional, optional, supplementary penalties for major offences (*délits*) of a racist character. It grants anti-racist associations the right of reply both in the press and on radio and television whenever a person has been subjected to offensive or defamatory allegations on the basis of his origins, or his membership or lack of membership in a particular ethnic, national, racial or religious group.

80. France has ratified the Convention on the Elimination of All Forms of Discrimination against Women, which entered into force on 13 January 1984. The Constitution of 4 October 1958 incorporates into its preamble, which is recognized as having constitutional value, the preamble to the earlier Constitution of 27 October 1946 which affirms that "... the French people proclaim once again that all human beings, without distinction as to race, religion, or religious belief, possess individual and inviolable rights" and, in particular, that "the law guarantees for women, in all domains, equal rights with men". The Act of 11 July 1975, as supplemented by the Act of 25 July 1985, incorporates into the Criminal Code provisions making punishable discrimination against women by either a representative of the State or a private person. The Act of 13 July 1983 on the rights and obligations of civil servants provides that no distinction may be made between civil servants on the basis of their political, trade union, philosophical or religious opinions, sex or ethnic origin. In respect of the private sector, the Act of 13 July 1983 is devoted in full to the matter of professional equality.

81. The Act of 1 July 1989 expressly authorizes a number of types of positive discrimination in favour of working women that had formerly been accepted in collective labour agreements; they have to do with such matters as extended maternity leave and work breaks for certain female typing and receptionist-type occupations.

(ii) Right to life

82. Act No. 81-908 of 9 October 1981 abolished the death penalty. France has also ratified, on 17 February 1986, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty.

(iii) Freedom from torture

83. France ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 18 February 1986. It ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on 9 January 1989.

84. Article 72 of Act No. 85-1407 of 30 December 1985, which includes various provisions of criminal procedure and criminal law, introduced the rule of universal jurisdiction with respect to torture (giving the national courts

jurisdiction over offences committed inside and outside French territory, whether or not the perpetrator is a French national), as required by the United Nations Convention (art. 689/2 of the Code of Criminal Procedure).

85. Articles 222-3-7, 222-8-7, 222-10-7, 222-12-7 and 222-13-7 of the new Penal Code afford protection to individual victims of torture, barbarity or violence of any kind, establishing that the commission of such offences by a person vested with public authority or responsible for providing a public service is an aggravating circumstance warranting a severer penalty.

86. Under French law, criminals who "employ torture or commit acts of barbarity" in carrying out their crimes are punishable by life imprisonment (art. 222-2 of the new Penal Code). Subjecting a person to torture or barbarous acts is punishable by 15 years' imprisonment.

2. Emergency powers

87. Intended essentially for exceptional circumstances, these powers modify for the time being the manner in which certain public freedoms may be exercised. They basically involve a temporary transfer of authority, circumscribed by numerous guarantees. They do not in any way alter the laws protecting fundamental human rights, from which there can be no derogation under any circumstances, such as article 4, paragraph 2, of the International Covenant on Civil and Political Rights. French law defines emergency powers very strictly.

(a) State of siege

88. The state of siege regime was established by the Act of 9 August 1849 and amended by the Act of 3 April 1878. A state of siege may be declared in case of imminent danger arising from a foreign war or armed insurrection. By virtue of article 36 of the Constitution, such a decision must be taken by the Cabinet and may be extended beyond 12 days only with the authorization of Parliament. The imposition of a state of siege chiefly entails the transfer of police powers to the military.

(b) State of emergency

89. Governed by the Act of 3 April 1955, a state of emergency may be declared by the Cabinet in the event of imminent danger arising from serious disturbances of public order or from events which by virtue of their nature and seriousness are deemed to be public disasters. Extension of a state of emergency beyond 12 days may be authorized only by law. The police are granted extended powers, accompanied by specific safeguards. According to article 700 of the Code of Criminal Procedure, "Where a state of siege or state of emergency has been declared, a decree in Cabinet (...) may establish local military tribunals under conditions fixed by the Code of Military Justice for times of war and by specific provisions of the laws relating to the state of emergency and the state of siege".

(c) Article 16 of the Constitution of 4 October 1958

90. Article 16 of the 1958 Constitution provides that "where the institutions of the Republic, the independence of the nation, the integrity of

its territory or the honouring of its international commitments are under serious and immediate threat and the regular operation of constitutional Government is interrupted, the President of the Republic shall take such measures as are required by the circumstances, after official consultation with the Prime Minister and the Speakers of the Assemblies and the Constitutional Council. He shall so inform the nation in a message. Such measures must be inspired by the desire to provide the constitutional Government, as promptly as possible, with the means of exercising its functions. The Constitutional Council shall be consulted in this matter. Parliament shall convene automatically. The National Assembly may not be dissolved during the exercise of special powers."

91. Subject to certain substantive and procedural requirements, article 16 extends the powers of the President of the Republic. This does not, however, imply an uncontrolled exercise of power: regulatory or individual decisions are administrative acts, and subject as such to review by the administrative courts in the event of an application to have them set aside.

92. France has entered a reservation with respect to the application of article 4, paragraph 1, of the International Covenant on Civil and Political Rights governing states of exception since the formulation of the conditions under which a State may take measures derogating from its obligations under the Covenant are much broader than the provisions of article 16 and the laws governing the state of siege and the state of emergency. In order to avoid differing interpretations, the reservation entered by France states that "the circumstances enumerated under article 16 of the Constitution as permitting application of that article, by means of the Act of 9 August 1849 as amended by article 1 of the Act of 3 April 1878 in respect of declaration of a state of siege, and by means of article 1 of the Act of 3 April 1955 in respect of declaration of a state of emergency, are to be understood as consistent with the purposes of article 4 of the Covenant". The reservation also specifies the interpretation which may be given to measures taken by the President of the Republic in implementation of article 16. The words "to the extent strictly required by the exigencies of the situation" cannot limit the power of the President of the Republic to take "the measures required by the circumstances".

D. Incorporation and application of international human rights instruments under national law

93. By virtue of article 55 of the Constitution, duly ratified and published treaties take precedence over law. Article 55 enshrines the "monist" system whereby the terms of international conventions are incorporated directly into French law; such terms, then, do not have to be translated into national provisions in order to be applicable in France. As they are self-executing, the norms of international human rights instruments may be invoked before the national courts.

94. While on the basis of article 61 of the Constitution, the Constitutional Council does not consider itself competent to judge whether laws are consistent with international treaties, it does check the constitutionality of laws. It has specified that the various State bodies are responsible for ensuring the implementation of international agreements within the framework of their respective jurisdictions.

95. Regardless of the mechanism by which international law is integrated into national law, the wording of a convention may mean that it, or one or more of its clauses, is not self-executing. In fact, the need to draft national implementing texts is clear in certain cases, for example, where a convention invites State Parties to choose how to enforce some of its stipulations by expressly providing one or even several alternatives; or where a convention unambiguously calls for implementing texts.

96. In any case, when an individual invokes a convention, it is ultimately for the courts to decide whether the convention is directly applicable.

E. Information and publicity. National institutions or machinery responsible for ensuring respect for human rights

97. Human rights form a body of fundamental principles which govern institutions; they are also rooted in the humanist tradition and the prevailing values of society. This tradition arises out of the history of the French people and is inextricably bound up with the nation's commitment to democracy and the rule of law: article 16 of the Declaration of the Rights of Man and of Citizens of 26 August 1789 proclaims, moreover, that "Every community in which a separation of powers and a security of rights is not provided for, wants a Constitution".

98. The fact that French is one of the official languages in which the international human rights instruments to which France is a party have been drafted (at the United Nations and the Council of Europe), facilitates the dissemination of these conventions.

99. These instruments are published automatically in the French *Journal officiel* , a prerequisite for their entry into force as is the case with laws and regulations. In addition, in accordance with article 53 of the Constitution, ratification by France of these instruments is subject to parliamentary approval, which provides a special opportunity for public debate and wide dissemination of the texts adopted, not only through institutional channels (such as reports of Parliament) but also through the media.

100. Lastly, the role of the national institutions and machinery responsible for ensuring respect for human rights is noteworthy because their primary mission is to provide information to citizens and persons involved in judicial proceedings; being, moreover, an indispensable part of their activities, this provision of information is a natural outgrowth of their principal functions, taking the form of public announcements and published reports and studies.

1. National Consultative Commission on Human Rights

(a) Background

101. On 17 March 1947, a decision taken at the initiative of P.H. Teitgen established the Consultative Commission for the codification of international law and the defence of the rights and duties of States and of human rights. Presided over by Rene Cassin, the Commission was at the time composed of about 10 lawyers, academicians and diplomats. This early Commission was in

particular mandated to elaborate a draft universal declaration on human rights. Its secretariat was provided by the secretariat of international conferences of the Ministry of Foreign Affairs.

102. The Commission was transformed on 30 January 1984 into the National Consultative Commission on Human Rights. The presiding officer, Mrs. Nicole Questiaux, a former minister and senior member of the Council of State, was mandated to advise the Minister for Foreign Affairs with regard to France's efforts to promote human rights throughout the world and, in particular, within international organizations.

103. On 21 November 1986, the Commission's international human rights mandate was extended to the domestic front, when the Commission was integrated into the State Secretariat for Human Rights, under the office of the Prime Minister. The Commission was appointed for a term of two years and had 40 members: representatives of major associations, of Parliament and of the Ministries concerned, and other individuals competent in the field of human rights. Up to February 1989, the presiding officer was Jean-Pierre Bloch, another former minister.

104. On 31 January 1989, the National Consultative Commission on Human Rights was attached directly to the office of the Prime Minister. It was empowered to take up any matter falling within its jurisdiction. It now has 70 members and since 1989 has been presided over by Paul Boucher, a State Councillor and former president of the Lyons Bar.

(b) Role and powers

105. The National Consultative Commission on Human Rights advises the office of the Prime Minister, of which it is part, and the Government and Parliament on all human rights questions, domestic and international. The Commission holds as a basic principle that a lasting reduction in ignorance, neglect or disregard of human rights can be brought about only through a continual application of institutional action - on the part of the legislative, executive or judicial powers - combined with practical social action in the field. Working at the juncture between State and society, the Commission is specifically designed to promote this essential coordination, using means which are flexible enough to respect the militant freedom of its members but sufficiently precise to enable it to advise the Government in a timely and appropriate fashion. It thus has a dual mission of monitoring and of proposing.

106. A decree dated 9 February 1993, amending the decree of 30 January 1984 which established it in its new form, declared the Commission to be "independent", and to have as its purpose "to advise the Prime Minister on all national and international matters relating to human rights". The Commission considers such matters either at the suggestion of the Government or on its own initiative, and makes its views public. It serves the dual purpose of monitoring and of proposing, both upstream of government action - while bills and draft regulations, policies and programmes are formulated - and downstream, checking to ensure that human rights have indeed been respected in administrative practice or in preventive measures.

107. The Commission fosters dialogue between the State and civil society in the field of human rights. Its composition makes for a wide variety of beliefs and opinions.

108. The State (Executive) is represented on the Commission by representatives of the Prime Minister and the nine Ministries principally concerned. A deputy and a senator, appointed by the Speakers of the two houses of Parliament, ensure liaison with the legislature. Members of the Council of State and of the bench facilitate contact with the judiciary. The Ombudsman brings his office's experience of relations with the country's various national and local administrations.

109. Civil society is represented by delegates from 28 national associations concerned with the promotion and protection of various aspects of human rights; representatives of the six main confederations of trade unions; 21 distinguished individuals representing the Catholic and Protestant churches, Islam and Jewry or coming from universities, the diplomatic corps, the Bar etc.; and these are joined by the French experts with seats on international human rights bodies.

110. The Commission is free to decide which international and national issues it will examine, without selectivity, on its own initiative. The Prime Minister may bring before the Commission any matter of his choosing. The Commission's broad scope has enabled it to express its opinion on bills and administrative provisions and to submit proposals on such issues as grinding poverty, the right of asylum, social rehabilitation of drug addicts, AIDS screening, bioethics, reform of the Code of Criminal Procedure, human rights education, wiretapping, and police files and, more recently, bills on nationality law and immigration controls.

111. All advice which the Commission gives the Government is made pub[illegible]c. The Commission rounds off the list of bodies responsible for ensuring that human rights are respected.

112. The Commission publishes an annual report on efforts to combat racism and xenophobia. At the international level, it keeps abreast of the work being carried out by the Commission on Human Rights, United Nations committees, the Conference on Security and Cooperation in Europe, and the Council of Europe.

2. Independent administrative authorities

113. The independent administrative authorities represent specific mechanisms for ensuring fundamental rights in the areas falling within their particular jurisdiction. Particularly noteworthy are the National Commission on Electronic Data Processing and Freedoms (*Commission nationale de l'informatique et des libertés*)(CNIL) and the Supreme Audiovisual Council (*Conseil supérieur de l'audiovisuel*) (CSA). Also worthy of mention are the Commission on Access to Administrative Documents (*Commission d'accès au documents administratifs*), the Survey Commission (*Commission des sondages*) and the National Commission on Wiretapping (*Commission nationale des interceptions de sécurité*).

(a) The National Commission on Electronic Data Processing and Freedoms

114. The National Commission on Electronic Data Processing and Freedoms was established by the Act of 6 January 1978 to ensure the protection of personal data in an era of growing computerization. This Act applies to computerized data and to non-automated files from the public and private sectors. All data processing is subject to rules fixed by law and monitored by the Commission. The Commission is an independent administrative authority and is composed of 17 members (senior civil servants, judges, and legislators) chosen by their peers or appointed by the Government and the Parliament for five years; members of the Commission are independent of any other authority. The Commission is vested with broad powers: any electronic data processing of personal data, whether by the Government, the administration, the State, local communities, public institutions, or private-law body corporate managing a public service, must be authorized by the Commission. An unfavourable decision may be set aside only by decree of the Council of State.

115. Private sector establishments are required to make a declaration, after which the data-processing operations are scrutinized to ensure their conformity with the law. For the most widely used types of data processing, both in the public and private sectors, the Commission adopts, by virtue of its regulatory powers, simplified standards. The Commission may receive complaints, petitions and claims. On its own initiative, the Commission may apply wide powers of control and verification by carrying out on-site inspections of data-processing procedures. Where necessary, it may refer matters to the courts. The Commission is bound to inform and counsel individuals on their rights and obligations and must itself keep abreast of the effects of computerization on private life, the exercise of freedoms and the functioning of democratic institutions. It may propose ways of adapting the machinery for the protection of freedoms to the development of computerized procedures and techniques. The Commission publishes an annual report.

(b) The Supreme Audiovisual Council

116. The Supreme Audiovisual Council, created in 1989, is the successor to the High Authority for Audiovisual Communication (*Haute Autorité de la communication audiovisuelle*) established in 1982 and the National Commission on Communication and Freedoms (*Commission nationale de la communication et des libertés*) set up in 1986. It is an independent authority which guarantees the freedom of audiovisual communication. Article 1 of the Act of 30 September 1986, as amended, on freedom of communication, provides that the "exercise of this freedom may be limited only to the extent required, on the one hand, by respect for the dignity of the individual, for the freedom and property of others and for the pluralistic nature of the expression of thoughts and opinions and, on the other hand, by the protection of public order, the needs of national defence, the needs of the public service, technical constraints intrinsic to the means of communication and the need to develop a national industry of national production".

117. Pursuant to article 1 of the Act of 17 January 1989 amending the Act of 30 September 1986 on freedom of communication, the Council ensures "equality of treatment (of users); it guarantees the independence and impartiality of public radio and television; it seeks to promote free

competition; it ensures the quality and diversity of programmes, the development of national audiovisual creation and production and the defence and illustration of the French language and culture (...)". The Council ensures respect for the free expression of diverse bodies of thought and opinion in programmes developed by national programming bodies, including broadcasts with political content. It sees to the protection of children and teenagers in broadcasts by audiovisual communication services.

118. The Council has nine members, appointed by decree of the President of the Republic; three members are nominated by the President, three by the Speaker of the National Assembly and three by the Speaker of the Senate. Members are appointed for a non-revocable and non-renewable term of six years. One third of the Council is renewed every two years.

119. The allocation of frequencies for any new terrestrial or satellite radio or television broadcasting service is subject to the conclusion of an agreement between the Council, acting on behalf of the State, and the applicant. The Council authorizes distribution of services over cable networks in response to proposals by communes or groups of communes; its authorization is granted for a limited period and specifies the number and type of services to be distributed, together with any additional obligations the Council may wish to impose (own services; local channel; payment of a fee). Authorization is subject to a prior signed agreement between the Council and the body making the application. The Council can refer anti-competitive practices and trusts to the administrative or judicial authorities having jurisdiction in such matters, and those authorities may seek advice from the Council.

120. Beyond its general overseeing role, the Council has consultative and regulatory powers. Its consultative powers arise from its broad mandate in the field of communication; it is thus associated at various levels with the elaboration of legislation and may put forth proposals. Its regulatory authority covers such areas as: (a) granting of authorization to use frequency bands or frequencies whose allocation or assignment have been entrusted to it, and taking steps to ensure proper signal reception; and (b) basic technical specifications governing cable networks.

3. Legal assistance

121. The system of legal assistance, which was substantially modified in 1991, plays a fundamental role in ensuring the effectiveness of human rights guarantees. The Act of 10 July 1991 established a unique system of legal assistance which consists of two parts: legal aid and legal rights assistance.

(a) Legal aid

122. The system of legal aid offers broad coverage of the costs of proceedings: it is applicable to any civil, administrative, criminal or disciplinary action and may be applied in administrative or judicial proceedings, in applications to or in defence before any court; it extends to proceedings for and writs of execution in respect of judicial decisions obtained with such aid.

123. Legal aid is available to all natural persons of French nationality, nationals of the Member States of the European Community, aliens residing usually and regularly in France and, in special cases, non-profit corporations with headquarters in France which lack adequate resources. Minors, whether facing criminal proceedings, receiving educational assistance or involved in proceedings as victims, have been entitled to the assistance of a lawyer since the new arrangements took effect. The residency requirement may be waived under certain circumstances, including where the foreign applicant is a minor, a witness assisted by counsel, or a defendant; has been detained, accused, or convicted; is a civil party bringing criminal proceedings; is subject to measures such as expulsion or return to the border; or has been refused a residence permit.

124. The task of verifying that the legal conditions have been met is carried out by special bodies: the legal aid offices in each court of major jurisdiction and attached to the Court of Cassation, the Council of State, the Jurisdiction Disputes Court (*Tribunal des conflits*) and the Refugee Assistance Commission (*Commission des recours de réfugiés*).

(b) Legal rights assistance

125. The aim of the legislature in creating the system of legal rights assistance was to develop and coordinate local efforts by judges, lawyers, and social and trade union organizations, such as the *maisons de justice* (citizens' advice bureaux) set up in 1990 for the purpose of assisting and providing information to people facing legal proceedings.

126. Legal rights assistance covers:

(a) Advice on the beneficiary's rights and obligations relating to basic entitlements and living conditions (individual freedoms, public freedoms, family relations, victims of minor offences, etc.);

(b) Assistance during administrative proceedings - advice and assistance in hearings before non-judicial bodies (rent disputes heard by the departmental rent conciliation commission, for example) or administrative proceedings.

The legal rights assistance system operates under the auspices of departmental Council of Legal Aid (*Conseils départementaux de l'aide juridique*), which are made up of representatives of the State, the administrative departments (*départements*) and the different categories of officers of the courts. It is intended to function autonomously within each department under agreements established within the framework of action to benefit society at large.